

this title) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of livestock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this section the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(Aug. 15, 1921, ch. 64, title I, §2(b), 42 Stat. 160; Pub. L. 94-410, §3(c), Sept. 13, 1976, 90 Stat. 1249.)

CODIFICATION

Section is composed of subsec. (b) of section 2 of act Aug. 15, 1921. Subsec. (a) of section 2 is classified to section 182 of this title.

AMENDMENTS

1976—Pub. L. 94-410 substituted "livestock" for "live stock" and "live-stock" wherever appearing.

SUBCHAPTER II—PACKERS GENERALLY

PART A—GENERAL PROVISIONS

§ 191. "Packer" defined

When used in this chapter the term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

(Aug. 15, 1921, ch. 64, title II, §201, 42 Stat. 160; Pub. L. 94-410, §2, Sept. 13, 1976, 90 Stat. 1249.)

AMENDMENTS

1976—Pub. L. 94-410 substituted definition of "packer" for former definition which included provisions dealing with direct or indirect control of specified businesses through stock ownership or otherwise.

§ 192. Unlawful practices enumerated

It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or

(b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or

(c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e).

(Aug. 15, 1921, ch. 64, title II, §202, 42 Stat. 161; Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649; Pub. L. 85-909, §1(1), Sept. 2, 1958, 72 Stat. 1749; Pub. L. 94-410, §3(a), Sept. 13, 1976, 90 Stat. 1249; Pub. L. 100-173, §3, Nov. 23, 1987, 101 Stat. 917; Pub. L. 102-237, title X, §1008(1), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 106-78, title IX, §912, Oct. 22, 1999, 113 Stat. 1205; Pub. L. 107-171, title X, §10502(b)(1), (2)(A), May 13, 2002, 116 Stat. 509, 510.)

AMENDMENT OF SECTION

For termination of amendment by section 942 of Pub. L. 106-78, see Termination Date of 1999 Amendment note below.

AMENDMENTS

2002—Pub. L. 107-171, §10502(b)(1), substituted "packer or swine contractor" for "packer" in introductory provisions.

Subsec. (c). Pub. L. 107-171, §10502(b)(2)(A), inserted ", swine contractor," after "other packer" in two places.

1999—Subsec. (b). Pub. L. 106-78, §§912, 942, temporarily struck out "whatsoever" after "locality in any respect" and after "disadvantage in any respect". See Termination Date of 1999 Amendment note below.

1991—Subsec. (c). Pub. L. 102-237 substituted a comma for period after second reference to "dealer".

1987—Pub. L. 100-173, §3(1), substituted "for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to" for "with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to" in introductory provisions.

Par. (c). Pub. L. 100-173, §3(2), struck out reference to poultry handlers wherever appearing and substituted "such persons" for "such packers".

1976—Pub. L. 94-410 struck out "in commerce" wherever appearing.

1958—Pub. L. 85-909 inserted “with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products” after “unlawful”.

1935—Act Aug. 15, 1921, title V, § 503, as added Aug. 14, 1935, inserted “or any live poultry dealer or handler” after “packer” wherever appearing.

TERMINATION DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-78 to terminate Sept. 30, 2015, see section 942 of Pub. L. 106-78, as amended, set out in a Livestock Mandatory Reporting note under section 1635 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

§ 193. Procedure before Secretary for violations

(a) Complaint; hearing; intervention

Whenever the Secretary has reason to believe that any packer or swine contractor has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served upon the packer or swine contractor, stating his charges in that respect, and requiring the packer or swine contractor to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer or swine contractor a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing the Secretary may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the packer or swine contractor, be adjourned for a period not exceeding fifteen days.

(b) Report and order; penalty

If, after such hearing, the Secretary finds that the packer or swine contractor has violated or is violating any provisions of this subchapter covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer or swine contractor an order requiring such packer or swine contractor to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the

matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States.

(c) Amendment of report or order

Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 194 of this title, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer or swine contractor to be heard, may amend or set aside the report or order, in whole or in part.

(d) Service of process

Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 45 of title 15.

(Aug. 15, 1921, ch. 64, title II, § 203, 42 Stat. 161; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85-791, § 6(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 94-410, § 3(b), Sept. 13, 1976, 90 Stat. 1249; Pub. L. 107-171, title X, § 10502(b)(1), May 13, 2002, 116 Stat. 509.)

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107-171 substituted “packer or swine contractor” for “packer” wherever appearing.

1976—Subsec. (b). Pub. L. 94-410 inserted provisions dealing with authority of Secretary to assess a civil penalty for violations and, upon failure to pay, procedure for recovery of such penalty.

1958—Subsec. (c). Pub. L. 85-791 struck out “a transcript of” after “until”.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals”.

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

§ 194. Conclusiveness of order; appeal and review

(a) Filing of petition; bond

An order made under section 193 of this title shall be final and conclusive unless within thirty days after service the packer or swine contractor appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer or swine contractor will pay the costs of the proceedings if the court so directs.

(b) Filing of record by Secretary

The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the

petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) Temporary injunction

At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the packer or swine contractor and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) Evidence

The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

(e) Action by court

The court may affirm, modify, or set aside the order of the Secretary.

(f) Additional evidence

If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modifications or setting aside of his order, with the return of such additional evidence.

(g) Injunction

If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer or swine contractor, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) Finality

The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction unless so ordered by the Supreme Court.

(Aug. 15, 1921, ch. 64, title II, §204, 42 Stat. 162; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §6(b), (c), Aug. 28, 1958, 72 Stat. 944; Pub. L. 98-620, title IV, §402(5), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 107-171, title X, §10502(b)(1), May 13, 2002, 116 Stat. 509.)

CODIFICATION

Former subsec. (i), which extended the former term “circuit court of appeals”, in case the principal place of business of the packer is in the District of Columbia, to the United States Court of Appeals for the District of

Columbia, for the purposes of sections 191 to 195 of this title, was omitted from the Code as obsolete. The District of Columbia is a judicial circuit under sections 41 and 43 of Title 28, Judiciary and Judicial Procedure. See, also, Change of Name note below.

AMENDMENTS

2002—Subsecs. (a), (c), (g). Pub. L. 107-171 substituted “packer or swine contractor” for “packer” wherever appearing.

1984—Subsec. (d). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1958—Subsec. (b). Pub. L. 85-791 §6(b), substituted “thereupon file in the court” for “forthwith prepare, certify, and file in the court a full and accurate transcript of”, and “as provided in section 2112 of Title 28” for “including the complaint, the evidence, and the report and order” in first sentence, and “record” for “transcript” in second sentence.

Subsec. (c). Pub. L. 85-791, §6(b), substituted “petition” for “transcript”.

Subsec. (d). Pub. L. 85-791, §6(b), struck out “duly certified” after “admitted”.

Subsec. (h). Pub. L. 85-791, §6(c), substituted “jurisdiction, which upon the finding of the record with it shall be exclusive,” for “exclusive jurisdiction,” and section “1254” for “347”.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended May 24, 1949, substituted “court of appeals” for “circuit court of appeals”, wherever appearing.

Act of June 7, 1934, provided that Court of Appeals in District of Columbia, should hereafter be known as the United States Court of Appeals for the District of Columbia.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 195. Punishment for violation of order

Any packer or swine contractor, or any officer, director, agent, or employee of a packer or swine contractor, who fails to obey any order of the Secretary issued under the provisions of section 193 of this title, or such order as modified—

(1) After the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time; or

(2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) After such order, or such order as modified, has been sustained by the courts as provided in section 194 of this title; shall on conviction be fined not less than \$500 nor more than \$10,000, or imprisoned for not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense.

(Aug. 15, 1921, ch. 64, title II, §205, 42 Stat. 163; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 107-171, title X, §10502(b)(1), May 13, 2002, 116 Stat. 509.)

AMENDMENTS

2002—Pub. L. 107-171 substituted “packer or swine contractor” for “packer” in two places in introductory provisions.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals", wherever appearing in this section.

§ 196. Statutory trust established; livestock**(a) Protection of public interest from inadequate financing arrangements**

It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables or proceeds from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

(b) Livestock, inventories, receivables and proceeds held by packer in trust for benefit of unpaid cash sellers; time limitations; exempt packers; effect of dishonored instruments; preservation of trust benefits by seller

All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers: *Provided*, That any packer whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this section. Payment shall not be considered to have been made if the seller receives a payment instrument which is dishonored: *Provided*, That the unpaid seller shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within thirty days of the final date for making a payment under section 228b of this title, or within fifteen business days after the seller has received notice that the payment instrument promptly presented for payment has been dishonored, the seller has not preserved his trust under this subsection. The trust shall be preserved by giving written notice to the packer and by filing such notice with the Secretary.

(c) Definition of cash sale

For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

(Aug. 15, 1921, ch. 64, title II, §206, as added Pub. L. 94-410, §8, Sept. 13, 1976, 90 Stat. 1251.)

§ 197. Statutory trust established; poultry**(a) Protection of public interest from inadequate financing arrangements**

It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase in cash sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry

or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in poultry and protect the public interest.

(b) Poultry, inventories, receivables and proceeds held by dealer in trust for benefit of unpaid cash sellers or poultry growers

All poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers, unless such live poultry dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of \$100,000.

(c) Effect of dishonored instruments

Payment shall not be considered to have been made if the cash seller or poultry grower receives a payment instrument which is dishonored.

(d) Preservation of trust benefit by seller or poultry grower

The unpaid cash seller or poultry grower shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within 30 days of the final date for making payment under section 228b-1 of this title, or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored, the seller or poultry grower has not preserved his trust under this section. The trust shall be preserved by giving written notice to the live poultry dealer and by filing such notice with the Secretary.

(e) Definition of cash sale

For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

(Aug. 15, 1921, ch. 64, title II, §207, as added Pub. L. 100-173, §4, Nov. 23, 1987, 101 Stat. 918.)

EFFECTIVE DATE

Section effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

§ 197a. Production contracts**(a) Right of contract producers to cancel production contracts****(1) In general**

A poultry grower or swine production contract grower may cancel a poultry growing arrangement or swine production contract by mailing a cancellation notice to the live poultry dealer or swine contractor not later than the later of—

(A) the date that is 3 business days after the date on which the poultry growing ar-

rangement or swine production contract is executed; or

(B) any cancellation date specified in the poultry growing arrangement or swine production contract.

(2) Disclosure

A poultry growing arrangement or swine production contract shall clearly disclose—

(A) the right of the poultry grower or swine production contract grower to cancel the poultry growing arrangement or swine production contract;

(B) the method by which the poultry grower or swine production contract grower may cancel the poultry growing arrangement or swine production contract; and

(C) the deadline for canceling the poultry growing arrangement or swine production contract.

(b) Required disclosure of additional capital investments in production contracts

(1) In general

A poultry growing arrangement or swine production contract shall contain on the first page a statement identified as “Additional Capital Investments Disclosure Statement”, which shall conspicuously state that additional large capital investments may be required of the poultry grower or swine production contract grower during the term of the poultry growing arrangement or swine production contract.

(2) Application

Paragraph (1) shall apply to any poultry growing arrangement or swine production contract entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this section.

(Aug. 15, 1921, ch. 64, title II, § 208, as added Pub. L. 110-234, title XI, § 11005, May 22, 2008, 122 Stat. 1356, and Pub. L. 110-246, § 4(a), title XI, § 11005, June 18, 2008, 122 Stat. 1664, 2118.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section 11005 of Pub. L. 110-246, which directed amendment of title II of the Packers and Stockyards Act, 1921, by adding sections 208 to 210 at the end, was executed by adding the sections at the end of this part, which is subtitle A of title II of the Act, to reflect the probable intent of Congress.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

§ 197b. Choice of law and venue

(a) Location of forum

The forum for resolving any dispute among the parties to a poultry growing arrangement or

swine production or marketing contract that arises out of the arrangement or contract shall be located in the Federal judicial district in which the principle part of the performance takes place under the arrangement or contract.

(b) Choice of law

A poultry growing arrangement or swine production or marketing contract may specify which State's law is to apply to issues governed by State law in any dispute arising out of the arrangement or contract, except to the extent that doing so is prohibited by the law of the State in which the principal part of the performance takes place under the arrangement or contract.

(Aug. 15, 1921, ch. 64, title II, § 209, as added Pub. L. 110-234, title XI, § 11005, May 22, 2008, 122 Stat. 1357, and Pub. L. 110-246, § 4(a), title XI, § 11005, June 18, 2008, 122 Stat. 1664, 2119.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section 11005 of Pub. L. 110-246, which directed amendment of title II of the Packers and Stockyards Act, 1921, by adding sections 208 to 210 at the end, was executed by adding the sections at the end of this part, which is subtitle A of title II of the Act, to reflect the probable intent of Congress.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

§ 197c. Arbitration

(a) In general

Any livestock or poultry contract that contains a provision requiring the use of arbitration to resolve any controversy that may arise under the contract shall contain a provision that allows a producer or grower, prior to entering the contract¹ to decline to be bound by the arbitration provision.

(b) Disclosure

Any livestock or poultry contract that contains a provision requiring the use of arbitration shall contain terms that conspicuously disclose the right of the contract producer or grower, prior to entering the contract, to decline the requirement to use arbitration to resolve any controversy that may arise under the livestock or poultry contract.

(c) Dispute resolution

Any contract producer or grower that declines a requirement of arbitration pursuant to subsection (b) has the right,² to nonetheless seek to resolve any controversy that may arise under the livestock or poultry contract, if, after the controversy arises, both parties consent in writing to use arbitration to settle the controversy.

(d) Application

Subsections (a)¹ (b) and (c) shall apply to any contract entered into, amended, altered, modi-

¹ So in original. A comma probably should appear.

² So in original. The comma probably should not appear.

fied, renewed, or extended after the date of the enactment of the Food, Conservation, and Energy Act of 2008.

(e) Unlawful practice

Any action by or on behalf of a packer, swine contractor, or live poultry dealer that violates this section (including any action that has the intent or effect of limiting the ability of a producer or grower to freely make a choice described in subsection (b)) is an unlawful practice under this chapter.

(f) Regulations

The Secretary shall promulgate regulations to—

(1) carry out this section; and

(2) establish criteria that the Secretary will consider in determining whether the arbitration process provided in a contract provides a meaningful opportunity for the grower or producer to participate fully in the arbitration process.

(Aug. 15, 1921, ch. 64, title II, §210, as added Pub. L. 110-234, title XI, §11005, May 22, 2008, 122 Stat. 1357, and Pub. L. 110-246, §4(a), title XI, §11005, June 18, 2008, 122 Stat. 1664, 2119.)

REFERENCES IN TEXT

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (d), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section 11005 of Pub. L. 110-246, which directed amendment of title II of the Packers and Stockyards Act, 1921, by adding sections 208 to 210 at the end, was executed by adding the sections at the end of this part, which is subtitle A of title II of the Act, to reflect the probable intent of Congress.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

PART B—SWINE PACKER MARKETING CONTRACTS

TERMINATION OF PART

For termination of part by section 942 of Pub. L. 106-78, see Livestock Mandatory Reporting note set out under section 1635 of this title.

§ 198. Definitions

Except as provided in section 198b(a) of this title, in this part:

(1) Market

The term “market” means the sale or disposition of swine, pork, or pork products in commerce.

(2) Packer

The term “packer” has the meaning given the term in section 1635i of this title.

(3) Pork

The term “pork” means the meat of a porcine animal.

(4) Pork product

The term “pork product” means a product or byproduct produced or processed in whole or in part from pork.

(5) State

The term “State” means each of the 50 States.

(6) Swine

The term “swine” means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

(7) Type of contract

The term “type of contract” means the classification of contracts or risk management agreements for the purchase of swine by—

(A) the mechanism used to determine the base price for swine committed to a packer, grouped into practicable classifications by the Secretary (including swine or pork market formula purchases, other market formula purchases, and other purchase arrangements); and

(B) the presence or absence of an accrual account or ledger that must be repaid by the producer or packer that receives the benefit of the contract pricing mechanism in relation to negotiated prices.

(8) Other terms

Except as provided in this part, a term has the meaning given the term in section 1635a or 1635i of this title.

(Aug. 15, 1921, ch. 64, title II, §221, as added Pub. L. 106-78, title IX, §934(2), Oct. 22, 1999, 113 Stat. 1208.)

TERMINATION OF SECTION

For termination of section by section 942 of Pub. L. 106-78, see Livestock Mandatory Reporting note set out under section 1635 of this title.

TERMINATION DATE

Part to terminate Sept. 30, 2015, see section 942 of Pub. L. 106-78, as amended, set out in a Livestock Mandatory Reporting note under section 1635 of this title.

§ 198a. Swine packer marketing contracts offered to producers

(a) In general

Subject to the availability of appropriations to carry out this section, the Secretary shall establish and maintain a library or catalog of each type of contract offered by packers to swine producers for the purchase of all or part of the producers’ production of swine (including swine that are purchased or committed for delivery), including all available noncarcass merit premiums.

(b) Availability

The Secretary shall make available to swine producers and other interested persons information on the types of contracts described in subsection (a), including notice (on a real-time basis if practicable) of the types of contracts that are being offered by each individual packer to, and are open to acceptance by, producers for the purchase of swine.

(c) Confidentiality

The reporting requirements under subsections (a) and (b) shall be subject to the confidentiality protections provided under section 1636 of this title.

(d) Information collection**(1) In general**

The Secretary shall—

(A) obtain (by a filing or other procedure required of each individual packer) information indicating what types of contracts for the purchase of swine are available from each packer; and

(B) make the information available in a monthly report to swine producers and other interested persons.

(2) Contracted swine numbers

Each packer shall provide, and the Secretary shall collect and publish in the monthly report required under paragraph (1)(B), information specifying—

(A) the types of existing contracts for each packer;

(B) the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under the contract for the following 6-month and 12-month periods;

(C) an estimate of the total number of swine committed by contract for delivery to all packers within the 6-month and 12-month periods following the date of the report, reported by reporting region and by type of contract; and

(D) an estimate of the maximum total number of swine that potentially could be delivered within the 6-month and 12-month periods following the date of the report under the provisions described in subparagraph (B) that are included in existing contracts, reported by reporting region and by type of contract.

(e) Violations

It shall be unlawful and a violation of this subchapter for any packer to willfully fail or refuse to provide to the Secretary accurate information required under, or to willfully fail or refuse to comply with any requirement of, this section.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as necessary to carry out this section.

(Aug. 15, 1921, ch. 64, title II, § 222, as added Pub. L. 106-78, title IX, § 934(2), Oct. 22, 1999, 113 Stat. 1208.)

TERMINATION OF SECTION

For termination of section by section 942 of Pub. L. 106-78, see Livestock Mandatory Reporting note set out under section 1635 of this title.

§ 198b. Report on the Secretary's jurisdiction, power, duties, and authorities**(a) Definition of packer**

In this section, the term “packer” has the meaning given the term in section 191 of this title.

(b) Report

Not later than 90 days after October 22, 1999, the Comptroller General of the United States shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the jurisdiction, powers, duties, and authorities of the Secretary that relate to packers and other persons involved in procuring, slaughtering, or processing swine, pork, or pork products that are covered by this Act and other laws, including—

(1) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), especially sections 6, 8, 9, and 10 of that Act (15 U.S.C. 46, 48, 49, and 50); and

(2) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(c) Contents

The Comptroller General shall include in the report an analysis of—

(1) burdens on and obstructions to commerce in swine, pork, and pork products by packers, and other persons that enter into arrangements with the packers, that are contrary to, or do not protect, the public interest;

(2) noncompetitive pricing arrangements between or among packers, or other persons involved in the processing, distribution, or sale of pork and pork products, including arrangements provided for in contracts for the purchase of swine;

(3) the effective monitoring of contracts entered into between packers and swine producers;

(4) investigations that relate to, and affect, the disclosure of—

(A) transactions involved in the business conduct and practices of packers; and

(B) the pricing of swine paid to producers by packers and the pricing of products in the pork and pork product merchandising chain;

(5) the adequacy of the authority of the Secretary to prevent a packer from unjustly or arbitrarily refusing to offer a producer, or disqualifying a producer from eligibility for, a particular contract or type of contract for the purchase of swine; and

(6) the ability of the Secretary to cooperate with and enhance the enforcement of actions initiated by other Federal departments and agencies, or Federal independent agencies, to protect trade and commerce in the pork and pork product industries against unlawful restraints and monopolies.

(Aug. 15, 1921, ch. 64, title II, § 223, as added Pub. L. 106-78, title IX, § 934(2), Oct. 22, 1999, 113 Stat. 1209.)

TERMINATION OF SECTION

For termination of section by section 942 of Pub. L. 106-78, see Livestock Mandatory Reporting note set out under section 1635 of this title.

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and

Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Agricultural Marketing Act of 1946, referred to in subsec. (b)(2), is title II of act Aug. 14, 1946, ch. 966, 60 Stat. 1087, as amended, which is classified generally to chapter 38 (§1621 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1621 of this title and Tables.

SUBCHAPTER III—STOCKYARDS AND STOCKYARD DEALERS

§ 201. “Stockyard owner”; “stockyard services”; “market agency”; “dealer”; defined

When used in this chapter—

(a) The term “stockyard owner” means any person engaged in the business of conducting or operating a stockyard;

(b) The term “stockyard services” means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;

(c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services; and

(d) The term “dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

(Aug. 15, 1921, ch. 64, title III, §301, 42 Stat. 163; Pub. L. 85-909, §2(1), Sept. 2, 1958, 72 Stat. 1750; Pub. L. 94-410, §3(c), Sept. 13, 1976, 90 Stat. 1249.)

AMENDMENTS

1976—Subsecs. (b) to (d). Pub. L. 94-410 substituted “livestock” for “live stock”.

1958—Subsecs. (c), (d). Pub. L. 85-909 struck out “at a stockyard” after “livestock”.

§ 202. “Stockyard” defined; determination by Secretary as to particular yard

(a) When used in this subchapter the term “stockyard” means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or non-profit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this subchapter until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition.

(Aug. 15, 1921, ch. 64, title III, §302, 42 Stat. 163; Pub. L. 85-909, §2(2), Sept. 2, 1958, 72 Stat. 1750; Pub. L. 90-446, §1(a), July 31, 1968, 82 Stat. 474.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-446 substituted “operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers” for “or operated for compensation or profit as a public market”.

1958—Subsec. (a). Pub. L. 85-909 struck out “Said sections shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet.”

TRANSPORTATION OF LIVESTOCK

Pub. L. 85-909, §2(2), Sept. 2, 1958, 72 Stat. 1750, provided in part: “That nothing herein [this section] shall be deemed a definition of the term ‘public stockyards’ as used in section 15(5) of the Interstate Commerce Act [former 49 U.S.C. 15(5)]”.

§ 203. Activity as stockyard dealer or market agency; benefits to business and welfare of stockyard; registration; penalty for failure to register

After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 202 of this title, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, which determination shall be made on a basis which is not unreasonable or unjustly discriminatory, and has given written authorization to such person, and (2) he has registered with the Secretary, under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyards services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 201 of this title may be required to register in such manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(Aug. 15, 1921, ch. 64, title III, §303, 42 Stat. 163; Pub. L. 85-909, §2(3), Sept. 2, 1958, 72 Stat. 1750; Pub. L. 90-446, §1(b), July 31, 1968, 82 Stat. 474.)

AMENDMENTS

1968—Pub. L. 90-446 designated existing provisions as cl. (2) and added cl. (1).

1958—Pub. L. 85-909 inserted “Every other person operating as a market agency or dealer as defined in section 201 of this title may be required to register in such manner as the Secretary may prescribe.”

§ 204. Bond and suspension of registrants

On and after July 12, 1943, the Secretary may require reasonable bonds from every market agency (as defined in this subchapter), every packer (as defined in subchapter II of this chapter) in connection with its livestock purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this para-